1908-030 Chancery Causes: Charles C. Newman &c vs. Darby Coal & Coke Co]
Lee Co.

Russell, Hughes, Whiland's Foundry & Machine Works], Brown,
Pennington, Milliken, Burgar

CA Contract Dispute
T-Property

-Dead

In The Circuit Court of Lee County.

To The Hon.H.A.W.Skeen,Judge of the Circuit Court of Lee County:

Humbly complaining,your orators,Charles C.Newman,John W. Newman and James J.Newman,respectfully represent and show unto your honor,as follows:

1. That on or about the 1st day of December,1903,they were the joint owners of a certain tract of land,subject to the coal and mineral rights of one F.A.Stratton,his heirs and assigns,situate and being in Lee county,Va.,in the Pocket country,on the waters of Gin's creek;that they obtained for a valuable consideration said land by a deed,dated the 6th day of January,1900 from E.G.Parsons and wife,a certified copy of which deed is here filed,marked "A",and prayed to be taken as a part of this bill;that the boundary of land conveyed them by the said Parsons in said deed was a part of a larger boundary owned at that time by said Parsons;that the said E.G.Parsons and wife by a certain other deed,to-wit on January, 2nd 1901 from him,conveyed the residue of his tract to one James A.Newman, a certified copy of which deed is here filed marked exhibit "B", and prayed to be taken as a part of this bill; that on or about the 1st day of December,1903,your orators by a written contract sold and agreed to convey,the said land conveyed them by the said E.G.Parsons and wife to The Darby Coal and Coke Company,a corporation,and which company is hereinafter referred to as "the defendant",at the price of $11.00 per acre;that said contract was signed by your orators and turned over to the said defendant,who they suppose now has the same;that said contract was never recorded,but recently said defendant company furnished to your orators' counsel with what it claims to be a copy of the original contract,and allowed a copy to be made from the copy furnished as aforesaid,which is here filed marked "C",and prayed to be taken as a part of this bill; and that soon after said defendant bought said land from your orators it went into the possession of the same and is still in the possession of the same using and occupying it in any manner as it

sees fit by building houses thereon for its servants and employees,and by cutting timbers therefrom.

2. Your orators will further show and allege that said land was duly surveyed at the instance of said defendant company by W.E.Thompson on or about January,13th,1904,and he found that the tract so sold to said defendant company contained 183.5 acres, which at the price of $11.00 per acre makes the total consideration to be paid your orators for the said land $2018.50;that at the time of the making of said contract said defendant company paid your orators the sum of $100.00 on the purchase price thereof,and that after said survey was made (but the exact date is not remembered by your orators) said defendant company paid on the purchase price of said land the further sum of $639.50,thus leaving a balance of $1279.00 owing to your orators on the purchase price of said land,which sum with its accrued interest is still owing and due to your orators.

3. Your orators will further show and allege that at the time they made their said contract of sale of said land to said defendant company,Emma Newman the wife of the said Chas.C.Newman was an infant,but she became 21 years of age on the 24th day of August, 1904;that after the said Emman became 21 years of age,your orators informed said defendant they were ready,able and willing to make it a deed to said land according the terms of their said contract, and it referred them to Mr.J.C.Noel,as its attorney,and thereupon they going to Mr.Noel for the purpose of having him prepare a deed he informed them that there was a possibility of some kind of shadow upon the title of said land,but prepared a deed for your orators to sign and execute,which they did and presented the same to the said defendant,but it refused to accept the same and refused to pay your orators said sum of $1279.00 or any part thereof;the deed so prepared by the said Noel,dated the 2nd day of Dec.,1905,is here filed marked exhibit "D",and prayed to be taken as a part of this bill.

4. Your orators will further show and alege that after repeated negotiations and efforts with said defendant company in trying to get it to settle and pay said $1279.00 and to accept a deed for said land, they placed the matter in the hands of their attorneys, who took the matter up with said defendant company for settlement, and it likewise referred your orators attorneys to its attorney, Mr.J.C.Noel; that your orators attorneys conferred with Mr.Noel concerning the matter and he and they agreed upon a certain deed, if properly executed, saying he would advise settlement and payment thereupon; that the deed agreed upon between the said attorneys, also was duly executed, but the said defendant company likewise refused to accept it and settle with your orators, still claiming that there were probable judement liens upon said land; that the judgement liens referred to by them were judgements against one John L.Pennington, whom said defendant company claimed ~~that~~ once owned said land. The last mentioned deed is here filed marked "E".

5. Your orators will further show and allege that no judgement creditor of said John L.Pennington has any lien or claim upon said land, but on the contrary they now have and did have on the date on which they made their said contract of sale to said defendant company a good title to said land so sold it; that the land sold by your orators and said James A.Newman to said defendant company was as aforesaid once owned entirely by the said E.GParsons, and if said John L.Pennington ever owned or had any interest in that part which your orators bought from said E.G.Parsons, he had the same interest in the part which said E.G.Parsons conveyed to said James A.Newman. For your orators are advised and allege that several years ago said John L.Pennington did make some kind of a contract with said E.G.Parsons for the purchase of the whole of the land mentioned in said Parsons deeds to both your orators and said James A.Newman, but never paid for or in any way carried out his part of his contract with the said E.G.Parsons, but wholy abandoned his contract with the said E.G.Parsons, which fact was judicially determined in

the Circuit court of this county in the late chancery cause of Greer Machinery Co. Vs. J.D.Pennington et als. But if your orators be mistaken about the legal effect of the judgement and decree aforesaid,and the judgement creditors of said Pennington do have a lien upon said land,their lien will be upon the whole of the Parsons and rest tract,and the part thereof sold and conveyed to the said James A.Newman will have to be subjected first to the payment of such liens,because by virtue of section 3575 of the Code lands,against which there are judgement liens,aliened at diferent times to diferent parties, are to be subjected to the payment of such liens in the inverse order of such alienations,and since the said Parsons sold and conveyed to the said James A.Newman after he sold and conveyed to your orators,that tract would have to be subjected first to any judgement lien against the same;and they allege that the said James A. Newman tract will satisfy any and all judgement liens against the whole of said tract of land. But your orators deny that any creditor of the said John L.Pennington have any judgement which would be a lien upon the lands which your orators sold said defendant company.

6. Your orators will further show and allege that by law they have an equitable vendor's lien upon said land so sold by them to said defendant company for the said amount of money yet due and owing to them; that such lien,however,is capable of being enforced only in a court of chancery;and that they have executed and properly acknowledged a deed to said land which is here filed as an escrow deed,to be delivered to said defendant company so soon as it pays your orators said sum of money and its interest.Said deed marked exhibit "F".

The premises considered,your orators are advised that they have an equitable vendor's lien upon said land for the said unpaid purchase money;and that their cause is only cognizable in a court of equity.

Their prayer therefore,is that the said The Darby Coal And Coke Company,a corporation, be made a party defendant to this bill;that

it be required to answer the same,but it need not do so on oath as that is waived;that it specially answer,if it claims there are defects in the title of said land,what defects there be in such title;and if it claims there be judgement liens against the said land,answer against whom such judgements are,in whose favor, the amount of each,and when each was obtained and docketed;whether it is not now in the possession of the said land so sold to it,and actual if it can,and if it can not give the actual,the the proximate amount of timbers cut and taken from said land;that on a final hearing of this cause,your orators be declared to have a lien upon said land for said sum of $1279.00,with legal interest thereon from the 4th day of Dec.,1904,till paid;and that if the same be not paid within a reasonable time,that a commissioner be duly appointed to sell said land,or enough thereof to pay said sum of money,and the costs of this suit. And that all other,further and general relief be awarded your orators that the nature of their cause may require. And they will ever pray,etc. May process issue.

Pennington Bros. P.Q.

Costs.

Clerk 8.65.

Sh'ff. .50

Att'y. 15.00

Chas. C. Newman et al

vs } Bill

Darby Coal & Coke Co.

1907 2nd April Rules

Bill filed. Sum.

executed & D.N.

" 1st May Rules

D.N. confirmed

& cause set for

hearing.

Pennington Bros.
ATTORNEYS AT LAW,
JONESVILLE AND PENNINGTON GAP, VA.

To the Honorable H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia:

Your petitioners, C. D. Russell, Geo. W. Hughes, Whelands Foundry & Machine Works, a corporation, C. P. Brown, administrator, with the will annexed of A. M. Brown, deceased, A. N. Pennington and W. J. Mileham, administrator of the estate of John S. Burgan, deceased, respectfully represent that at the second April rules, 1907, of the said court, one Chas. C. Newman and others filed therein their bill in chancery against the Darby Coal & Coke Company, a corporation, for the purpose of having specifically executed a contract of sale by said plaintiffs to the said defendant company of a certain tract of land mentioned in the said bill and fully described in the exhibits therewith filed.

Your petitioners further represent that they are interested in the subject matter of the said suit and they will here and now proceed to set forth their interest and claims:

As set forthbin the said plaintiffs' bill and as shown by the contract filed therewith marked "Exhibit C", the complainants contracted and sold unto the said defendantvon the 1st day of December, 1903, a certain boundary of land therein described, and the said contract shows on its face that it was the same land which had been theretofore purchased from ~~xhm~~ one E. G. Parsons.

As is also set forth in the said bill and fully shown by the deed filed therewith marked exhibit "A" the said land in controversy was conveyed to the sa d complainants by E. G. Parsons and wife, to which reference is hereby made.

The said tract of land, in controversy in this suit, is a part of a larger tract which was conveyed to the said E. G. Parsons by B. H. Sewell, special commissiober in the chancery cause of Greer Machinery Company vs. J. D. Pennington and other lately pending in this court, which cause is here referred to and prayed to be treated as evidence herein and herewith.

The said deed from the said B. H. Sewell, special commissioner, to the said E. G. Parso s was recorded in Lee County Deed Book No. 34, page 327 of the 9th day of January, 1899, and a certified copy thereof with be filed herewith as a part hereof as soon as a copy can be procured, marked "E. G. P. Deed."

By deed dated January 3rd, 1894, E. G. Parsons and wife had conveyed to one John L. Pennington the whole of the said tract of land, lying on Gins creek, in the Pocket country, in Lee County, Virginia, containing 288 acres, more or less, and a copy of the said deed is filed herewith as a part hereof marked "J. L. P. Deed."

The aforesaid chancery cause entitled "Greer Machinery Co. vs. J. D. Pennington et al." was a lien creditors suit, the object of which, among other things, was to enforce the lien of certain judgments therein reported, against the real estate of the said J. L. Pennington.

Numerous steps and proceedings were had in the said cause, and the same was at length referred to one E. W. R. Ewing, Special Commissioner. who reported, among other things, a large number of judgment liens against the said John L. Pennington, and also that the said John L. Pennington was the owner of the aforesaid 288 acre tract of land, conveyed to him as aforesaid by the said E. G. Parsons and wife, subject however to a vendor's lien in favor of the said Parsons for the sum of $1380. with interest thereon from the 3rd day of January, 1894. The said Ewing, special Commissioner, also makes the following statement in his said report:

> "There is filed with the deposition of J. L. Pennington as contract between himself and the said E. G. Parsons by which the said Parsons agrees to take back the said land in full discharge of the said lien. From the evidence before your commissioner this is much more than can be hoped to be realized from a sale of the said tract; and it is in further evidence that such a transaction would be to the interest of all parties concerned (see depo. William Pennington), and it is recommended that this be carried into effect. Your commissioner recommends that a commissioner be appointed and directed to make the said Parsons a deed in consideration of the full discharge of the said lien."

The deposition of the said John L. Pennington, taken before said Commissioner Ewing, and referred to by him in his said report as aforesaid, is especially referred to and prayed to to taken and treated as evidence in this cause, along with the whole record of the said Greer Machinery Cause.

The agreement referred to in the said report and deposition as above stated, between the said J. L. Pennington and the said E. G. Parsons, is or ought to be still on file with the said Greer Marchinery case, and is in the words and figures following, to-wit:

"Whereas, heretofore, to-wit, on the 3rd day of Jan., 1894, E. G. Parsons sold and conveyed his tract of land situated in the Pocket country of Lee county, Virginia, to John L. Pennington, in consideration of the sum of $2880.00. Of this sum the said Pennington undertook to pay and did pay, to A. J. Baumgardner the sum of $1500.00, and for the residue of $1380.00, the said Pennington executed two notes each for the sum of $690.00, each bearing interest from the 1st day of Jan. ,1894, the first due in two years from date, and the second in three years from date. And whereas the said E. G. Parsons retained a lien on the surface of said tract of land, and all the timber thereon, except the poplar, ash, cucumber, lynn and buckeye, to secure the payment of said two notes of $690.00 each, and permitted the said Pennington to remove from the said land said poplar, ash, cucumber, lynn and buckeye timber, for the purpose of raising money with which to pay to the said A. J. Baumgardner said sum of $1500.00 as aforesaid. And whereas both of sai $690.00 notes are now due, and together with the in erest thereon, wholly unpaid. And it being conceded by said Pennington that if the said tract of land, in its present condition was exposed to sale that it would not pay the purchase money due thereon, and the said E. G. Parsons being willing to take a reconveyance to said land and to surrender to the said John L. Pennington his two notes aforesaid. Noe, in consideration of the premises aforesaid, the said John L. Pennington, in consideration of the two notes aforesaid, agrees and binds himself to convey to the said E. G. Parsonssaid tract of land, with covenants of special warrant and freedom from all encumbrance, and in consideration of said conveyance, if the same should be approved by the court by a decree entered in the lien creditors' suit now pending against the said John L. Pennington and others, in the circuit court of said county, the said E. G. Parsons agrees to surrender to the said John L. Pennington said two notes aforesaid and to forever release him from any liability on account thereof.

Witness the following signatures and seals, this April 28, 1897.

J. L. Pennington (Seal.)
E. G. Parsons, (Seal.)"

And petitioners allege that the said contract just herein copied has never been recorded in Lee County.

On the 10th day of November, 1897, a decree was entered by the court in the said cause of Greer Machinery Co. v. J. D. Pennington et al., which in part is as follows:

"And it is further adjudged, ordered and decreed that the sale made by E. G. Parsons to J. L. Pennington upon which there appears to be as much due to said E. G. Parsons as the said land bought by the said J. L. Pennington will bring the said sale to the said Pennington, by consent, is rescinded, and that B. H. Sewell, whio is hereby appointed a special commissioner for the purpose will make to the said E. G. Parsons a deed to the said land conveyed by him to said Pennington with covenants of special warranty. And said commissioner appointed to make said deeds as aforesaid will whever he has made said deeds report the fact to court, together with the deeds made."

On the 16th day of June, 1898, another decree was entered by the court in the said cause, which, in part, is as follows:

"And the court doth further adjudge, order and decree that B. H. Sewell who was heretofore directed to make a deed to J. E. Parsons of the land that was conveyed by J. E. Parsons to J. L. Pennington, proceed to make said deed with covenants of special warranty, and report the same to the next term of this court, and said Sewell will likewise proceed to make a deed to E. G. Parsons of the land that was conveyed by E. G. Parsons to J. L. ennington, and report the matter to the next term of this court."

It was under the two decrees last aforesaid that the said B. H. Sewell, Special Commiss oner as aforesaid, made and executed to the said E. G. Parsons the deed for said land as hereinbefore set forth.

Said Commissioner Sewell filed a report in said cause on the 17th day of November, 1898, showing the execution of the said deed, and the said report and deed was confirmed and approved b a decree entered therein on the 17th day of November, 1898.

Now, your petitioners are advised, therefore, that the proceedings had and taken in the said cause preclude all creditors of the said John L. Pennington whose liens were reported in the said cause from enforcing the said judgments against the said 288 acre xx tract of land, but they are further advised that the contract aforesaid between the said John L. Pennington and the said E. G. Parsons for the re-conveyance of the said tract of land is void as to the creditors of the said John L. Pennington whose liens

were not reported in the said cause of Greer Machinery Co. v. J. D. Pennington et al., and further that such lien creditors are not thereby precluded from enforcing their said liens against the said land.

Your petitioners, C. D. Russell and Geo. W. Hughes, allege that at the June term, 1897, of the circuit court of Lee County, ~~xxxxxxxxxxxxxxxxx~~ a judgment was rendered aganist J. D. Pennington, as principal, and J. L. Pennington, C. D. Russell, Wm. Pennington and Geo. W. Hughes, as sureties, ~~xxxxxxxxxxxxxxx~~ in favor of Orr & Blankenship, for the sum of $175.00, with interest from the 7th day of September, _____, until paid , an $7.86 costs; that the said J. D. Pennington was then, has been ever since, and is now insolvent; that the co-surety, the said William Pennington,is likewise insolvent; that they, the said C. D. Russell and Geo. W. Hughes, were compelled to and did pay to the said Orr & Blankenship, the sum of $86.50 each on the 20th day of August, 1898, in full satisfation to said Orr & Blankenship of the amount then due on the said judgment; that petitioner, the said C. D. Russell, has never been repaid any part of the said $86.50 paid by him as aforesaid by the said J. D. Pennington, or any other person; and that petitioner, the said C. D. Russell, is now entitled to require the said J. L. Pennington to repay to him, or rather to contribute for the purpose of reimbursing him, one third of the amount so paid by him as aforesaid, with interest thereon from the date of such payment, and that is the ~~xxxx~~ object of this petition so far as the said C. D. Russell is concerned; that petitioner, the said Geo. W. Hughes, has been repaid one-forth of the amount paid by him as aforesaid by his co-surety, William Pennington, but has never been repaid anything by said J. D. Pennington, nor has the said J. L. Pennington ever contributed to

anything to him to make them equal, and he is advised that he has the right here and now to call upon and require the said J. L. Pennington to so contribute and repay to him one-fourth of the amount so paid out by him as aforesaid to the said Orr & Blankenship on the said judgment, and that is the object of this petition so far as the said Geo. W. Hughes is concerned.

Your petitioner, Whelands Foundray & Machine Works, a corporation, alleges that on the 21st day of May, 1898, the said J. L. Pennington confessed a judgment in its favor, in the clerk' office of the Lee Circuit Court, for the sum of $144I.88, with interest thereon from the 7th day of March, 1893, until paid, and $6.50 costs, which judgment was duly docketed in Lee County J. L. D. No. ___, page _____, on May 21st, 1898, the day of its rendition; that said Pennington has made the following payments on said judgment and none other, to-wit: $40.00 on Aug. 9th, 1898; $212.00 on Jan. 8th, 1900; $171.00 on July 15th, 1900; $I00.00 on April 2nd, 1901, ; and $200.00 on June 15th 1901; and $63.2I one June 20th 1901.; that the whole of the residue of the said judgment is still due and unpaid to petitioner, the said Whelands Foundray & Machine Works.

Your petitioner, C. P. Brown, administrator with the will annexed, of A. M. Brown, deceased, alleges that on the 10th day of June, 1898, the said A. M. Brown obtained a judgment before a justice of the peace for said county of Lee against the said J. L. Pe nington for the sum of $12.49 with interest thereon from the 1st day of January, 1897 until paid, and $0.75 costs; that said judgment was duly docketed in Lee County J. L. D. No. 3 p. 178 on the date of its rendition; that no part of said judgment was ever paid to the said A. M. Brown in his lifetime, or to his administrator since his death; and that the whole and every part thereof is still due and unpaid to the said administrator.

Your petitioners, A. N. Pennington and W. J. Mileham, adminsitrator of the estate of John S. Burgan, dec'd, allege that at the Novemver term of the circuit court for Lee County, in the year 1899, a judgment was rendered in favor of Mary E. Lanningham against William Pennington, as principal, and J. D. Pennington, J. L. Pennington, A. N. Pennington and W. J. Mileham, administrator as aforesaid, as sureties, for the sum of $633.98, with interest thereon from the 1st dav of March, 1895, until paid, and $52.52 costs, and the said judgment was duly docketed in Lee County J. L. D. 3. p. 205 on Nov. 25th , 1899; that on the same day a judgment was rendered in favor of Lee Phillipps against the same parties for the sum of $798.88 with interest from March 1st, 1895, until paid, and $25.88 costs, su subject to a credit of $26.46 as of March 1st, 1896, and the said judgment was docketed on the same book and page and on the same date as the foregoing judgment; and thatat the same term of the court a judgment was rendered in favor of Jennie Phillipps against the same parties for the sum of $798.88 with interest thereon from March 1st, 1895, and $25.88 costs, subject to a credit of $31.05 as of March 1st, 1906, and this judgment was docketed in the same book and page and on the same date as the two foregoing judgments.

Said last mentioned petitioners further allege that the said William Pennington, principal in said three last mentioned judgments, is insolvent, and that the said J. D. Pennington one of their co-sureties, is likewise insolvent; that the said A. N. Pennington was compelled to and did make the following payments on the said judgments: $64.14 on April 12th, 1899; $331.89 on Dec. 1st, 1900; $151.89 on July 7th, 1901; $286.31 on Oct. 23rd, 1901; $1000.00 on Jan. 6th, 1902; $250.56 on January 17th, 1902; and $17.50 on May 6th, 1902; that the estate of the said John S. Burgan paid on said judgments the following amount s, viz:

that said judgments, so far as the plaintiffs therein are concerned, have been fully paid; that the said William Pennington has never repaid to the said A. N. Pennington, or W. J. Mileham, admr. &c., any part of the amounts due them; that the said A. N. Pennington and W. J. Mileham, admr. are entitled now to require the said J. L. Pe nington to contribute until they are equal,and they allege that he has not done so in any manner whatsoever, but is now justly due to them such amount as may be required to equalize them as cosureties as aforesaid

Now your petitioners all allege that all the judgments hereinbefore set out by them are liens upon the lands in controversy in this suit, and that they are entitled to have the same enforced in this suit, and the said land subjected to the payment of the same.

The object of this petition, therefore, is to enforce the liens of the judgments hereinbefore set out against the tract of land mentioned by the complainants in their bill.

Your petitioners pray, therefore, that the complainants be required to amend their bill so as to make them parties defendant thereto; and that this petitioner be trated as an answer to the complainants' bill and also as a crossbill against them and the Darby Coal & Coke Co, the defendant therein; they pray that their judgments aforesaid be decreed to be liens upon the said tract of land in their proper order of priority and that the same be sold to pay said liens, and for full general relief.

James W. Orr and
L. T. Hyatt, attorneys
for petitioners.

Chas C. Newman et al

vs

Darby Coal & Coke Co

Petition of C. D. Russell et al

Filed May 24 1907

H. C. D. Ewing.

Clerk

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia.

The answer of the Darby Coal & Coke Company a Corporation to a bill of complaint filed in this court at Second April Rules, 1907 by Chas. C. Newman, and others, against ~~this respondent~~ it.

For answer to said bill of complaint, or so much thereof as this respondent is advised that it is material for it to answer, answering says: That it is true that on or about the first day of December, 1903 the said complainants were the owners of a certain tract of land subject to the coal and mineral rights of one F. A. Stratton his heirs and assigns, situated and being in Lee County, Virginia on the Pockett Country on the waters of Gin's Creek, and that the said complainants obtained said land by a deed dated the 6th day of January, 1900 from E. G. Parsons and wife, and being the same land as described in Exhibit"A" with said bill of complaint. And it is further true that the said E. G. Parsons and wife by said other deed dated on the 2nd day of January, 1901 conveyed the residue of said tract of land to one James A. Newman it being the same land as described in Exhibit "B" with said bill. It is further true that about the first day of December, 1903 the said complainants by written contract sold and agreed to convey the said land conveyed to them by said E. G. Parsons and wife to this respondent at the price of $11.00 per acre and that said contract was signed by complainants and turned over to this respondent, and which is now in the possesion of this ~~exhibit~~ respondent, and which is herewith filed as part of this answeres and prayed to be read and treated as such and marked Exhibit "1"; and that this respondent furhished to the complainants a copy of the original contract being the same marked "Exhibit B" with said bill. It is further true that this respondent took possession of said tract of land and has been using it and occupying it building house s thereon for its servants and employees, and that it has cut some timber therefrom.

-1-

It is further true that this land was duly surveyed at the instance of this respondent by W. E. Thompson sometime about January 13th, 1904, and that he found said tract of land to contain 183.5 acres, which at the price of $11.00 per acre would make a total of $2018.50,,and that this respondent at the time of the making of said contract paid the complainants down $100.00 on the purchase price thereof and that after said survey was made this respondent paid to ~~your~~ said complainants the further sum of 63.50 leaving a balance of $1279.00 owing to said complainants on said tract of land. But your respondents deny that any interest has accumulated on the said $1279.00 and they further allege and charge that no interest ~~over~~ by the provision of the said contract will accrue thereon until said complaintants furnish this respondent a good and sufficient deed for said land, acceptable to ~~them~~ it. It is further true that at the time the contract was entered into Emma Newman, wife of the said Chas. C. Newman was an infant, and they suppose that it is now true that the said Emma Newman has arrived at the age of twenty one years, and it is probably also true that ~~at~~ the time or shortly after the time when the said Emma Newman became twenty one years of age that said complainants informed this respondent that they were ready and willing to make a deed to said land according to the said contract and that this respondent referred them to Mr. J. C. Noel its attorney. It is further true that Mr. Noel informed the complainants that there was a shadow upon the title of the said land, and at that time told them that he could not recommend ~~xxx~~ the acceptance of a deed ~~from~~ to said land until the shadow or cloud was removed from said title. It is further true that Mr. Noel wrote a deed for the complainats to sign, but he did that at their instance and not as a representative or attorney for this respondent. And it is also true that Exhibit "D" with the said bill is the deed that was prepared by the said J. C. Noel. It is also true that this respondent on another occasion when the complainants asked for a settlement of the matter in their hands or their attorney's, that said attorney was referred

to this respondnant's attorney Mr. Noel, and it is true that Mr. Noel agreed upon a deed which he said he would present to this respondent but he informed the attorney of the complainants that he did not know whether or not this respondent would accept the same. And it is true that when said deed was presented that this respondnet likewise refusedto accept it and settle with said complain ants, claiming that their statement removed the shadow or cloud upon said title to said land, which cloud on said title we will now set forth and show the same. Said attorneys for the said complainants and said complainants themselves were informed ~~as~~ there was a cloud or shadow upon the title resting upon said tract of land; which said cloud is as follows: Some time in the Year 1895 the Greer Machinery Company instituted in the Circuit Court of this County a suit in Chancery against J. D.Pennington Wm. Pennington and J.L. Pennington, and in which said suit a great many proceedings were had. The judgment lien creditors of John L. Pennington, J. D. Pennington and Wm. Pennington were supposed to have been summoned before a commissioner of this court and an account taken and stated of the judgment liens against the estate of said John L. J. D. Pennington and Wm. Pennington and the liens owned by said Penningtons were ascertained and reported to the court. It appearing in said report and in said proceeding in said suit that John L. Pennington had bought the lands now in controversy from E. G. Parsons for which the said E. G. Parsons had executed a deed to the said John L. Pennington retaining thereon a vendor's lien on which said land there remained unpaid $1380.00 or thereabouts; that by agreement of counsel in said cause, to-wit the counsel representing the said Penningtons , those representing the Greer Machinery Company; those representing said E. G. Parsons, and those representing the lien creditors of the said John L. Pennington who were made parties to said suit, that said parties should take for the purchase money then remaining unpaid, as all the counsel in the

cause were satisfied that said land if sold at that time would not bring sufficient money to pay the said amount due to the said E G Parsons, which constituted the first lien upon the said land. Whereupon B. H. Sewell was appointed a special commissioner of the court, and as such special commissioner executed a deed to the said E. G. Parsons for said land, which said deed was duly confiermed by the court. Now this respondent is advised that if all the judgment lien creditors of the said John L. Pennington had been made parties to the said suit of the Greer Machinery Company against the said J. D. Pennington et al, that the said transfer of the said land from the said John L. Pennington to the said E. G. Parsons through commissioner B. H. Sewell would have been a valid transfer, and the title to the same would be free from a cdoud or shadow. The said papers in the case of the said Greer Machinery Company against J. D. Pennington and others is hereby referred to and asked to be read and treated as a part of this answer.

Now this respondent is advised that since the settlement of the aforesaid suit, and since this contract was made by this respondent for said land or part of said land from the complainants that one A. N. Pennington, who claims to be the owner of some judgments against the said John L. Pennington, and probably W. J. Mileham, Administrator of the estate of J. S. Burgan, claim that they were not made parties to said suit, and therefore they said transfer of said land from said John L. Pennington back to the said E. G. Parsons through commissioner B. H. Sewell is not valid as to them and that their judgments against the said John L. Pennington and others constitute a lien upon said tract of land. As to the justness of said claim of A. N. Pennington and of the said W. J. Mileham, administrator &c as aforesaid, this respondent is not advised, but it is advised that said claims constitute a shadow or cloud upon the title of said land, and as to said Pennington and Mileham, administrator as aforesaid have continueally threatened to institute suit to subject said land to the payment of their respective judgment. This respondent is advised that it should not

pay to the said complainants the residue of the said purchase money until said claim s are litigated and until said cloud or shadow is removedefrom said title, and so it asks that before the court requires it to pay the residue of said purchase money to the said complainants that the said A. N. Pennington and the said W. J. Mileham, administrator as aforesaid be made parties to this suit and that they be required to answer said bill, or or to set up their respective claims, and have the same litigated and determined. And this respondent asks that this answer be treated as a cross bill if necessary as against the said A. N. Pennington and W. J. Mileham, Administrator &c. as aforesaid,.

It is true that the land purchased by this respondent from James A. Newman and that contracted for from the complainants was once owned entirely by the said E. G. Parsons, and it is probably true that if, the lien creditors of John L. Pennington has any interest in the land in controversy in this suit that they have a right like interest in the land sold by said Parson to the said James A. Newman and that if the said judgment creditors of the said John L. Pennington have a lien upon said land that the same constitues a lien upon the whole of said Parsons tract. But the allegations in the complainant's bill, that the land conveyed to the said James A. Newman by the said E G. Parsons would be first subjected to the payments of such liens, because conveyed by the said Parsons to the said James A. Newman on January 2nd, 1901, which would have to be subjected first by virtue of Section 3575 of the Code is denied by this respondent. Said Section applies only to Alienation made by the judgment debtor, and this respondent charges that said lands were alienated by John L. Pennington who was the judgment debtor back to E. G. Parsons on the same day and by one single deed, through B. H. Sewell, Commissioner, a copy of which deed is herewith filed and prayed to be read and treated as a part thereof marked Exhibit "2". It is immetarial, so this respondent is advised, how many allienations the said Parsons might have made of said land that the whole of the said land alike is subjected and in the same order as if all the

alienations by the said Parsons had been made on the same deed provided the liens of the said A. N. Penningtona and W. J. Mileham administrator as aforesaid, should turn out to be liens upon said land.

This respondent has ever been ready, anxious and willing to pay to the complainants the balance of the purchase money upon said tract of land since said complainants should furnish them a deed free from encumbrances as stipulated fn said contract. And it is advised that a court of equity will not compell it to pay the balance of the purchase money so long as a cloud remains upon the title of said land. And n

And now having answer the said bill, or so much thereof as it is advised it is material for it to answer, and denying all the allegations therein not herein specificallt admitted or denied it prays to be hence dismissed with its reasonable cost.

J. C. Nock S.d.

Darby Coal & Coke Co
ads } Answer
Edward C. Newman, et als.

Filed May 23, 1907.
W. C. T. Ewing,
Clerk.

Chas.C.Newman et al., Complainants.	#	
Vs.	#	In Chancery.
The Darby Coal & Coke Co., Defendant.	#	

To the Hon.H.A.W.Skeen, Judge of the Circuit Court for Lee County:

The demurrer of said Complainants to the petition and cross bill of C.D.Rusell, Geo.W.Hughes, et als, filed in this cause on the 24th day of May, 1907, and for demurrer to said petition and cross bill say they are advised that said cross bill is not sufficient in law to call upon them to answer, and for the following reasons:

(1). Said cross-complaiants after setting out in their cross bill that they had several judgements against said John L.Pennington, allege that the same and each of them are liens upon the lands mentioned in the said Complainants bill, without stating any reason why they should have a lien upon the same.

(2). The order of Nov., 10th, 1897, entered in the chanacery cause of Greer Machinery Co. Vs.J.D.Pennington et al, and which is quoted in part by said cross-complainants on page 4 of their cross bill, shows that the sale of the lands of E.G.Parsons to said J.L.Pennington was rescined; and said sale being recinded then the said Parsons was placed in statu quo concerning the land sold by him to said J.L.Pennington, and the registry acts do not require such orders to be recorded; the registry acts only apply to contracts and deeds, made in pais, and make void only such, unless recorded as to creditors, and does not make void as to creditors judicial proceedings and decrees concerning real estate, unless recorded.

(3). And for other reasons to be stated at bar.

And your complainants will ever prayetc.

Pennington Bros

C. C. Newman et al

vs. } Demurrer to Crossbill

Darley Coal & Coke Co

Filed Sept 16, 1907.
H. C. P. Ewing
Clerk.

Chas. C. Newman,et als., Complainants.

vs. Decree Final.

The Darby Coal & Coke Co., A Corporation, Defendant.

This cause came on this the _____day of May, 1908, to be fu ther heard upon the papers formally ~~rendered~~ read herein, and the statement of counsel for the plaintiffs made at bar, to the effect that the defendant had heretofore paid to the plaintiffs the sum of money decreed to them, by a decree entered ~~herein~~ in this cause on Septemebr, 18,1907, and was argued by counsel.

On the consideration of all which, and for reasons appearing to the Court it is adjudged, ordered and decreed that the defendant in this cause be allowed and permitted to withdraw from the files therein exhibit "F" filed with said plaintiffs' bill as an escrow deed and it being a deed dated the 20th day of March,1907, of the said complainants to the defendant.

And it appearing to the Court that on September, 18,1907, there was a decree intered in this cause directed to the Clerk of this Court to deliver to said defendant exhibit "E" filed with the bill of said complainant, provided that said defendant paid said debt and the costs of this suit before the sale of the land mentioned therein was made; and it now appearing that there was a mistake in said part of said decree; that exhibit "F" was intended instead of exhibit "E" to have been mentioned in said decree; it is therefore adjudged, ordered and decreed that so much of said decree of September, 18,1907, as referred to said exhibit "E" to be delivered to said defendant, is herewith annulled and set a side; and there remaining nothing further to be done in this cause, it is ordered that the same be and is hereby stricken from the docket.

Chas. C. Newman et al

vs } Decree Final

Darby Coal & Coke Co

Entered in C.O.B.
#8, page 367

Enter this May 4th 1908
J. A. W. Sheen
Judge

Chas. C. Newman, John W. Newman, & Jas. J. Newman, ---Complainants.

Vs. ----------Decree.----------

The Darby Coal & Coke Company, a Corporation----------Defendant.

This cause came on this day to be heard upon the bill of the complainants, and exhibits filed therewith, the answer of The Darby Coal & Coke Company and exceptions thereto, the petition and cross bill of C. D. Russell, Geo. W. Hughes, Wheelands Foundary & Machine Works, a corporation, C. P. Brown, administrator, with the will annexed of A. M. Brown, A. N. Pennington, and W. J. Mileham, administrator of the estate of John. S. Burgan, deceased, filed herein on the 24th day of May, 1907, the demurrer of said complainants to said cross bill, and petition and joinder in said demurrer by said cross-complainants and the plea of statute of limitations of said complainants as to the claims of said A. N. Pennington, C. D. Russell, Geo. W. Hughes, & W. J. Mileham, admr. of the estate of J. S. Burgan and joinder in said plea and was afgued by counsel.

On consideration of all which and the court being of the opinion that said plea of the statute of limitations is sustained from the allegations of said petitioners in their said cross bill, it being shown in said bill that all the payments made by said C. D. Russell, & Geo. W. Hughes as sureties for J. D. Pennington, and by A. N. Pennington, and by W. J. Milehan as said administrator, as sureties for Wm. Pennington were made more than five years before the filing of said petition & crossbill; and the court being further of the opinion that the demurrer of said complainants to said petitioners said cross bill is well taken because the court is of the opinion from the allegations of said cross bill that said E. G. Parsons, the vendor of the complainants in this suit, derived his title to said land by virtue of a decree entered in the Chancery cause of Greer Machinery Company Vs. J. D. Pennington et al on Nov. 10th, 1897, rescinding the sale of said land by E. P. Parsons to said J. L. Pennington, and appointing B. H. Sewell a commissioner to convey to said Parsons the title to said land, and that the registry Acts do not apply to such orders

and decrees made by a court of Competent jurisdiction, and for other reasons; and it is therefore adjudged ordered and decreed that said petition and cross bill be and the same is hereby dismissed and the said complainants are hereby decreed their costs and an attorney's fee of $15.00 by them on account of said cross bill against said cross complainants.

And this cause this day coming on further to be heard upon the bill of said complainants and exhibits filed therewith, the answer of said Darby Coal & Coke Company and exceptions thereto and was argued by counsel.

On consideration of all which it is further adjudged ordered and decreed that said Chas. Newman, John W. Newman, and Jas. J. Newman recover from the said The Darby Coal & Coke Company, A corporation, the sum of($1279.00) One Thousand Two Hundred and Seventy-nine dollars, with interest thereon from the 4th day of December, 1904. and the cost of this suit till paid, and which sum is a first and vendor's lien upon the land in the bill of said complainants mentioned and described in exhibit "D"; and it is further adjudged ordered and decreed that E. W. Pennington, who is hereby appointed a special Commissioner for the purpose, will (if said sum of $1279.00 and its interest and the costs of this suit be not paid by the first day of November, 1907), after advertising the time, terms, and place of sale for thirty days by posting written or printed notices of such sale, at as many as three public places in this county, one of which shall be in the neighborhood of said land, one at Pennington Gap, and one at Jonesville, shall offer said land for sale at public auction to the highest and best bidder at the front door of the Post-office in the town of Pennington Gap in this county, or enough thereof to pay said debt, its interest and the cost of this suit, and commissions of sale, on a credit of Six and Twelve months time, except a sum sufficient to pay the costs of this suit and commissions of sale he will require to be paid down; and for the residue he will take two notes of equal amounts, payable to himself as such commissioner, bearing interest from date of sale and with good personal security and

due in six and twelve months from date of sale. And said E. W. Pennington will report his action to Court. But before said Pennington shall act under this decree, he will execute a bond beford the clerk of this court in penal sum of $1600.00, conditioned to faithfully account for all sums of money coming into his hands as such commissioner. If said defendant shall pay said debt and costs of this suit before a sale of said land is made, the clerk of this court will deliver the deed of said complainants to said Defendant and filed in this cause as exhibit "E", and dated January, 19, 1907.

~~And this cause is continued.~~

Memo:

The petitions and cross-complainants, C.D. Russell, G.W. Hughes, Wheeland Foundry & Machine Works, a corporation, C.P. Brown, Admr.c., A.N. Pennington and W.G. Mileham, Admr.c., stating to the court that they feel aggrieved by said decree, and desire to apply to the Supreme Court of Appeals of Virginia, for an appeal therefrom, it is further ordered that execution of same be suspended for a period of 60 days from this date upon the execution of a proper bond by them or some one for them in the sum of $100, conditioned as required by law, with approved security, before the clerk of this court.

And this cause is continued.

Chas. C. Newman et al

vs } Decree for Sale &c

Darby Coal & Coke Co

Entered in C.O.B. #8, page 321 &c—

Enter this
Sept. 18th 1907
H. A. W. Shane

Chas C. Newman et al Plaintiffs
vs } In Chancery
Darby Coal & Coke Co., Defendant.

On motion of the defendant, the Darby Coal & Coke Co., leave is granted it to file its answer to the plaintiffs' bill, and the same is accordingly filed, and the plaintiff is given until the next Term to file exceptions to said ~~replied generally thereto~~ answer if so advised.

On motion of C. D. Russell, Geo. W. Hughes Wheland's Foundry & Machine Works, a corporation, C. P. Brown, administrator with the will annexed, of A. M. Brown, decd, A. N. Pennington and W. L. Mileham, administrator of the estate of John S. Burgan, decd, leave is granted them to file their petition in this cause, and the same is accordingly filed.

Thereupon, on motion of the plaintiffs, leave is granted them to amend their bill making the aforesaid petitioners parties defendant thereto, which amendant was made at bar.

And thereupon, on motion of the said petitioners, their said petition is treated as an answer to the said bill and as a cross-bill against the plaintiffs and the Darby Coal & Coke Co., defendant.

Thereupon ~~on motion~~ the said plaintiffs, by their counsel, and the said Darby Coal & Coke Co., by its counsel, appeared to said cross-bill.

And on motion of the said plaintiffs and said Darby Coal & Coke Co., defendant, they are given until the next term to file their demurrer and answer to the said cross-bill.

And the cause is continued.

Chas. C. Newman et al.

vs. { In Chancery

Darby Coal & Coke Co.

Decree ~~for~~ noting filing answer, petition &c.

Entered in CDR. # 8, page 298

Enter this decree
May 24th 1907.
J. A. W. Sluss

THIS DEED made this the 6th day of January 1900, by E. G. Parsons and Martha W. his wife parties of the first part to Jas. J. Newman, John W. Newman and Chas. C. Newman parties of the second part, and all of Lee County Virginia: Witnesseth, that for and in consideration of the sum of Six hundred dollars, three hundred of which is in hand paid, the receipt whereof is hereby acknowledged, and the residue to be paid in two Equal annual installments with interest from date, the said parties of the first part reserving a vendors lien for said deferred payments and their interest do and each of them doth hereby give grant, bargain, sell convey and deliver unto said second parties in fee simple a certain tract or parcel of land lying in Lee County in the Pocket Country and on the waters of Gins creek, and bounded as follows to-wit; Beginning at a stake on the east bank of Gins creek, thence N. 59 1/2 E about 8 poles to a stake near the foot of a hill at the mouth of a hollow N 26 3/4 W 16 1/2 poles to a rock the lower edge of a cliff and with said cliff N 36 1/2 W 4 poles to a stake N 62 1/2 W 3 1/2 p to a stake at said cliff corner to Wm. C. Parsons and Jas. E. Parsons land North 46 1/2 E 21 p to a large chestnut N 40 E 9 poles to a maple on a ridge, thence along the top of the same N 42 E 20 1/4 p to a red or spotted oak N 28 E 16 1/2 p to a chestnut oak N 49 E 7 p to a chestnut oak N 62 E 13 1/3 p to a locust N 43 1/2 E 12 p to a stake N 31 E 23 p to a rock N 32 E 12 p to a stake N 26 1/2 E 20 poles N 41 E 10 p N 54 E 11 poles N 35 E 7 to a large white oak N 19 1/2 E 20 p N 55 E 11 poles to the west end of a cliff ~~N 64 E 19 poles to the west end of a cliff~~ N 64 E 19 poles to a stake on the top of a high point on the top of a big ridge S 23 1/2 E 13 p to a stake S 34 E 16 poles to a stake S 17 1/2 E 10 p to a stake S 9 1/2 W 21 p to a stake S 26 E 29 1/2 p to a chestnut oak S 27 W 14 p S 4 1/2 E 18 p S 3 1/2 W 6 p S 11 1/2 E 4 p S 49 E 6 p S 29 E 10 p S 43 1/4 E 14 p to two chestnut oaks, thence down the same ridge as it meanders and with the top of same to a stake and chestnut oak on the McCredie line, thence leaving said McCredie line S 5 W 12 poles to a chestnut oak, hickory and fallen chestnut, thence S 51 W 51 1/4 p to a maple and chestnut on a spur, thence S 82 W

69 poles to an oak & beech stump, thence contunuing about 2 poles on same degree to the east bank of Gins Creek, thence up said creek as it meanders to the Beginning, excepting from said boundary such rights as may belong to F. A. Stratton or assigns therein. To have and to hold said tract of land together with all its appurtenances unto the said second parties, their heirs and assigns forever, except the Stratton claims therein. And said first parties reserve to themselves their heirs and assigns a right for domestic purposes to use water from the spring near the beginningcorner of this land. And said first parties for themselves reserve a vendors lien upon the land herein conveyed until said deferred payments are made in full.

Witness the following signatures and seals, the day & year first above written.

E. G. Parsons Seal

Martha W. Parsons Seal.

Virginia, Lee County, to-wit;

I,_____in and for the County & State aforesaid do hereby certify that E. G. Parsons and Martha W. Parsons whose names are signed to the righting above bearing date on the 6th day of January 1900, have acknowledged the same before me in my County afores_aid.

Given under my hand & seal this the 8 day of January 1900.

W. T. Orr, J. P.

The purchase money to secure which the vendor's lien was retained in this deed has been paid in full. The lien created thereby is therefore discharged. Given under my hand and seal this 20th day of July 1903.

E. G. Parsons (Seal)

Virginia, Lee County, to-wit:

I, B. M. Morgan, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that E. G. Parsons whose

name is signed to the foregoing certificate of release has acknowledged the same before me in my County aforesaid. Given under my hand this 20th day of July 1903.

B. M. Morgan Clerk.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County, the 20th day of July 1903. This deed was presented, and together with the certificate of acknowledgment thereto annexed, admitted to record.

Teste: B. M. Morgan Clerk.

A copy,

Teste: H. C. T. Ewing, Clerk.

Deed Book No 40, Page 429 etc.

This Deed made this the 2nd day of January, A. D. 1901 by Elijah G. Parsons and Martha W. Parsons, his wife, parties of the first part, to James A. Newman party of the second part, and all of Lee County, Virginia.

Witnesseth, That for and in consideration of the sum of Five Hundred dollars in hand paid by said second party to said first parties, they the said first parties with covenants of General Warranty, Do and each of them Doth, excepting therefrom all interest therein of F. A. Stratton, his heirs or assigns, a certain tract or parcel of land lying and being in Lee County, in the Pocket country, on the waters of Gins Creek and being a part of the same land which J. E. and W. C. parsons and their wives by deed dated the 13th day of February, 1890, conveyed to said Elijah G. Parsons and bounded as follows, to wit: Beginning at a beech in a hollow on a line of the old McCredie survey and with same S. 74 W 35 poles to a bunch of Chestnut saplings on top of a ridge, thence leaving said McCreedee and up and with the top of said ridge as it meanders, N. 31 1/2 W 5 1/2 p. to a chestnut, chestnut oak and maple N 86 W. 17 2/3 p. to a chestnut oak, N. 82 W. 8 p. to a chest N 68 1/2 W. 12 p. to a chestnut oak, -nut oak, S. 86 W. 4 p. N. 68 W. 8 1/4 p. to a large chestnut oak, N. 86 W. 9 p., S. 68 1/2 W. 9 p. to a sugar tree, S. 78 W. 12 1/2 p. to a large sugar-Tree, S. 77 W. 14 p. S. 43 1/2 W. 13 p. to two chestnuts, and an ash a corner to the James Fields land, now owned by Johnson Jessee, on top of the Brier ridge, thence up with the top of the same, as it meanders, N. 50 W. 13 p., N. 42 1/2 W. 13 p. to a stake on top of a spur, N. 10 W. 3 p. N. 57 E. 9 1/2 p. to a hickory and large buckeye, N. 43 1/4 E. 8 p. to a sugar tree, N. 26 E 5 1/3 p. N 40 1/2 E. 4 p., N. 49 1/2 E.14 p., N. 43 E 8 p. near the east end of a cliff, N. 55 1/2 E. 12 p., N. 65 1/2 E. 6 p., N. 46 1/2 E. 12 poles to a chestnut, N. 86 E. 11 2/3 p. to a stake and locust, N. 69 1/2 E. 4 p., N. 31 1/2 E. 11 p. N. 69 1/2 E. 6 p., S. 60 1/4 E. 9 p., S. 74 1/2 E. 6 p., N. 73 E 12 p., N. 63 1/2, E. 11 p., N. 47 E. 9 p. to a stake and small chestnut, S. 77 1/2, E. 11p., N. 59 1/2 E. some 16 or 17 p. to a stake in Gins Creek, thence down Gins Creek as it meanders to a stake and corner to the lands

of J. J. Newman thence, thence with his line N. 82 E 2 or 3 poles to an oak and beech stump on the east side of Gins Creek thence S. 15 E 66 poles to a hornbeam and cucumber near Gins Creek, S. 5 E. 20 poles to where a chestnut was called for, S. 7 W. 44 1/4 p. to a chestnut and spanish-oak; thence westwardly across the said creek and across a bottom with Wm Turner's line to a stake in a hollow and branch, and on the line of said first party's deed which reads "Beginning at a white-oak stump west of Gins Creek on a steep bank, corner to A. J. Newmans land, thence N. 14 3/4 W. 196 poles to a beech", thence N. 14 3/4 W some 150 poles to the Beginning, and supposed to contain one Hundred acres more or less together with the right to use the water from the spring reserved in said first parties deed to J. J. Newman; To Have and to Hold said tract of land, with all its appurtenances, Excepting all rights therein of F. A. Stratton his heirs and assigns, unto the said James A. Newman for and during his natural life, and after his death then to Henry L. and Ettie E. Newman in Fee simple, children and heirs of Abbie Newman, who was Abbie Philipps; the said purchase price of said land having been paid out of funds which said James A. Newman obtained as receiver for said Abbie Newman, and in which fund he has a life estate.

Witness the following signatures and seals, the day and year first above written.

Elijah G. Parsons (seal)

Martha W. Parsons (seal)

Virginia, Lee County, to-wit:

I, A. G. Hyatt a Notary Public in and for the County and State aforesaid, do hereby certify that Elijah G. Parsons and Martha W. Parsons, whose names are signed to the writing above bearing date on the 2nd day of January 1901, have acknowledged the same before me in my county aforesaid. Given under my hand this the 2 day of January 1901.

A. G. Hyatt

Notary Public

Virginia, Lee County, to wit:

In the Office of the Clerk of the County Court for said County, the 12 th day of January, 1901, this deed being properly stamped was presented, and together with the certificate, thereto annexed, admitted to record.

Teste: B. M. Morgan, Clerk.

A copy,

Teste: H. C. P. Ewing, Clerk.

D. B. 37, page 95, etc.

James A. Newman
From } Deed
Elijah G. Parsons, Aux

Copy.

"B"

Fee $.90

This Agreement made and entered into this first day of December, 1903, by and between Campbell Newman, J.W.Newman and J.J.Newman, of Lee county, Va., parties of the first part, and the Darby Coal & Coke Co., a corporation organized under the laws of West Virginia, of the second part.

Witnessed that for and in consideration of the sum of eleven $11.00) dollars per acre, the said parties of the first part do hereby agree to sell and convey by good and sufficient deed unto the party of the second part, that certain tract or parcel of land, situated and being in Lee county, Va., in the pocket country, on the waters of Gin's creek, containing by estimation one hundred and eighty acres, more or less, and adjoining the same lands of J.E.Parsons, W.C.Parsons, James A.Newman and others and being the same land purchased by the said parties of the first part from E.G.Parsons, and to the deed from said Parsons to the parties of the first part reference is hereby made for a more particular description thereof. The exact amount of land in said boundary, it to be ascertained by actual survey, the expense of which to be paid by the party of second part. The sum of one hundred dollars ($100.00), part of the whole purchase price is this day paid in cash, the receipt of which is hereby acknowledged the balance of the purchase price is to be paid as follows: One-third as soon as the party of the second part can have a survey of the said land completed, and the residue as soon as a good and sufficient deed to said land is executed and delivered by said parties of the first part, and accepted by the party of the second part. The survey is to be made by a competent surveyor selected by the party of the second part, and to be completed within sixty days from this date.

The parties of the first part agree and bind themselves to make unto the party of the second part, or their assigns, within twelve months from date, a good and sufficient deed conveying said lands to said second party with covenants of general warranty free from all incumbrances and dower rights, with the following exceptions, to-wit:

(1) The mineral rights and privileges heretofore conveyed to one F.A.Stratton, by J.E.Parsons & wife, W.C.Parsons & Wife and J.E.Parsons, are excepted, and reserved for the benefit of said Stratton and his assigns.

(2) The house in which Campbell Newman now lives is reserved, provided it be removed from said land by the first day of January, 1904.

The said second party shall have the right to immediately enter upon said lands and erect such buildings, tipples, roads, etc., as it may desire; and to excavate and do such other acts it may deem necessary towards preparing to operate a mining plant on said land, provided that said Campbell Newman shall have the right to occupy the house in which he now lives, until January, 1st, 1904.

Witness the following signatures and seals, day and year first above writteN.

His
Campbell X Newman, (Seal).
Mark

His M
J.W.Newman X (Seal).
Mark.

His
J.J.Newman, (Seal).
Mark.

Witnesses.
L.S.Turner,
J.A.Newman.
J.C.Noel.

Virginia, Lee County, to-wit:

I, . a justice of the peace in and for the county aforesaid in the state of Virginia, do certify that Campbell Newman, J.W. Newman and J.J.Newman, whose names are signed to the above writing, bearing date of the first day of Dec.1903, have acknowledged the same before me in my county aforesaid.

Given under my hand this _____ day of Dec., 1903.

_____ J.P.

C. C. Newman et al

vs } copy of Contract

Darby Coal Stoke Co

Exhibit "C"

This DEED made this 2nd day of December,1905 between Chas.C. Newman and Emma Newman his wife,James J.Newman and John W. Newman,all of Lee County,Virginia,parties of the first part, and Darby Coal & Coke Company,a corporation,party of the second part,

WITNESSETH:

That for and in consideration of eleven dollars per acre,making a total of two thousand and eighteen ($2018.50) dollars and fifty cents,in hand paid the receipt of which is hereby acknowledged the said parties of the first part,do give,grant,bargain,sell and convey unto the party of the second part all that certain tract or parcel of land situate and being on the waters of Gin's Creek in the Pocket country of Lee County,Virginia,containing one hundred and eighty three (183½) and one half acres,and being the same boundary of land conveyed by E.C.Parsons and wife to the said Chas.C.Newman,James J.Newman and John W.Newman,by deed bearing date of the 6th day of January,1900,and bounded as follows: Beginning at a stake in Gin's Creek on a line of W.C.Parson's land opposite a large birch Northwest of Newman's old house;thence N.59°30'E.128 feet to a stake near the foot of the hill,N.26°45'W.260 feet to the point of a cliff;thence along said cliff N.36°30'W.66 feet to a stake;N.62°30'W.73 feet to a stake below said cliff on James Parsons' line;thence with said line N.47°45'E.320 feet to a large chestnut on a spur of a ridge; thence with the top of said ridge N.40°E.145 feet to a maple; N.42°15'E.338 feet to a red oak (cut down);N.28°30'E.178 feet to a chestnut oak;N.49°E.114 feet to a chestnut-oak;N.62°E.219 feet to a locust;N.43°30'E.198 feet to a stake;N26°30'E.330 feet to a stake on the West side of a large rock;N.41°E.165 feet to a stake;N.54°E.181 feet to a stake at the edge of a rock;N.38°30' E.99 feet to a white oak;N.19°30'E.352 feet to a large chestnut-oak on a ridge;thence with the top of said ridge N.55°E.167 feet to West end of cliff;N.64°E.310 feet to a stake on top of a large

n. 31° E. 400 feet to a rock; n. 32° E. 198 feet to a stake;

ridge in a line of the H.Z.Parsos'412 acre tract;thence down the top of said Ridge and with the said Parsons' line,S.21°30'E. 214 feet to a stake;S.34°E.264 feet to a stake;S.17½°E.195 feet to a stake;S.10°15'W.350 feet to a stake;S.24°45'E.497 feet to a chestnut-oak;S28°W.231 feet to a stake;S.3°30'E.297 feet to a stake;S.3°30'W.99 feet to a stake;S.10°E.86 feet to a stake on a point;S.49°E.99 feet to a rock by a large white-oak;S.29°E. 165 feet to a stake below a large chestnut-oak;S.43°30'E.225 feet to two chestnut oaks,a corner to the H.Z.Parsons' land,and down the top of a ridge with a line of said Parsons'land,S.7°W.180 feet to a chestnut-oak;S.5°30'E.173 feet to a chestnut-oak on a point;S.34°45'W.225 feet to a stake;S.29°30'W.179 feet to a chestnut -oak;S.1°W.207 feet to a chestnut-oak;S.10°30'W.375 feet to a chestnut-oak,corner to the John P.Myers tract;and with lines there of S.1°E.190 feet to a chestnut-oal and hichory;S.52°W.863 feet to a chestnut and maple;S.84°W.1126 feet to a stake at the mouth of a hollow on the East side of Gin's Creek,thence continuing on the same S.84°W.59 feet to a stake in Gin's Creek;thence up said creek as it meanders,N.30°30' W.290 feet to a stake;N.6°E.197 feet to a stake;N.17°30'W.363 feet to a stake;N.10°W.299 feet to a stake;N. 34°30'W.580 feet to a stake opposite to the Chas.C.Newman house; N.71°W.129 feet to the beginning.To have and to hold the said tract of parcel of land together with the appurtenances thereunto belonging unto the party of the second part,its successors and assigns forever;but the rights in and to the said land heretofore conveyed to one F.A.Statton is hereby excepted from this conveyance And the said parties of the first part covenant that they will forever warrant and defend the title to the lands herein conveyed against the claims of all persons whomsoever;and that the they will pay the costs including a reasonable attorneys fee in clearing the title to said land should the said second party or its attorney deemit advisable to institute such ~~such~~ suit.

The said parties of the first part further covenant that they

will execute such further assurances of and for the said land, and its appurtenances as may be requisite to make the title thereto of the said second party, its successors ans assigns, sure and complets forever.

Witness the following signatures and seals day and year first aforesaid.

Attest
J J Y

his
Chas C Newman (Seal)
mark
Emma Newman (Seal)
his
James J Newman (Seal)
mark
his
John W Newman (Seal)
mark

Virginia, Lee County, to-wit:

I, J J Yeary a Justice of the Peace for the county aforesaid in the State of Virginia, do certify that Chas. C. Newman, Emma Newman, James J. Newman, and John W. Newman, whose names are signed to the above deed, bearing date of the 2nd day of December, 1905, have each acknowledged the same before me in my county aforesaid. Given under my hand this 4th day of December 1905.

J J Yeary J.P

Darby Coal & Coke Co.

From { Deed.

Thos. C. Newman et al.

Exhibit "D"

THIS DEED,made this the 19th,day of January,1907,by and between Chas.C.Newman,and Emma Newman,his wife,John W.Newman and James J.Newman,all of Lee County,Virginia,parties of the first part,and THE DARBY COAL AND COKE COMPANY, a corporation,party of the second part;

W I T N E S S E T H ;

THAT WHEREAS,heretofore,the said first parties by a written contract sold and agreed to convey unto the said second party,the surface of the tract of land,hereinafter described by meets and bounds;

THAT WHEREAS, said contract,is said by said second party,by some means to have gotten lost or mislaid,and can not now be found.

NOW IN CONSIDERATION of the premises aforesaid,and the sum of (2018.50) Two Thousand and Eighteen and 50/100 Dollars,Seven Hundred and Thirty-nine and 50/100 Dollars thereof has heretofore been paid by said second party to the said first parties,and the residue,that is the sum of ($1279.00) Twelve Hundred and Seventy-nine Dollars, with interest counted thereon from the 14th day of January,1905, to this date amounts to the sum of ($154.55) One Hundred and fifty-four and 55/100 Dollars,interest,which added to said ($1279.00) Twelve Hundred and Seventy-nine Dollars make a total of ($1433.55) Fourteen Hundred and Thirty-three and 55/100 Dollars,of which last named sum ($1333.55) Thirteen Hundred and Thirty-three and 55/100 dollars thereof is in hand paid to said first parties,and the residue that is,the sum of One Hundred Dollars to be paid to the said first parties,so soon as the attorneys of the parties to this deed,or a court of competent jurisdiction determine that there be no liens against the land herein conveyed to said second party,they,the said first parties,do and each of them Doth hereby give,grant,sell and convey unto the said second party,subject to and excepting therefrom all the rights,title,interest and privileges of one F. A. Stratton,or those claiming by,through or under him by virtue of a deed made to the said Stratton by E.G.Parsons and others,the following described

tract or parvel of land,lying and being in Lee county,Virginia, in the Pocket Country,on the waters of Gin's Creek,and bounded as follows,to-wit:

BEGINNING at a stake in Gin's creek on a line of W.C.Parsons' land opposite a large birch Northwest of Newman's old house; thence N.59° 30' E.128 feet to a stake near the foot of the hill, N.26° 45' W.260 feet to the point of a cliff;thence along said cliff N.36° 30' W.66 feet to a stake; N.62° 30' W.73 feet to a stake below said cliff on James Parson's line;thenve with said line N.47° 45' E.320 feet to a large chestnut on a spur of a ridge;thence with the top of said ridge N.40° E.145 feet to a maple;N.42° 15' E. 338 feet to a red oak (cut down);N.28° 30' E. 178 feet to a chestnut oak;N.49 E.114 feet to a chestnut oak; N.62 E.219 feet to a locust; N.43° 30' E.198 feet to a stake; N.31° E.400 feet to a rock;N.32 E.198 feet to a stake; N.26° 30' E.330 feet to a stake on the west side of a rock;N.41° E.165 feet to a stake; N.54° E.181 feet to a stake at the edge of a rock; N.38° 30' E.99 feet to a white oak;N.19° 30' E.352 feet to a large chestnut oak on a ridge;thence with the top of said ridge, N.55 E.167 feet to West end of a cliff;thence N.64° E.310 feet to a stake on top of a large ridge in a line of the H.Z.Parsons 412 acre tract of land;thence down the top of said ridge and with the said Parsons' line,S.21°30' E.214 feet to a stake; S.34° E. 264 feet to a stake; S.17 1/2° E.195 feet to a stake;S.10° 15' W.350 feet to a stake;S.24° 45' E.497 feet to a chestnut oak;S. 28° W.231 feet to a stake; S. 3° 30' E.297 feet to a stake;S.3° 30' E. 99 feet to a stake;S.10° E.86 feet to a stake on a point; S.49 E.99 feet to a rock by a large white oak;S.29 E.165 feet to a stake below a large chestnut oak; S.43° 30' E.225 feet to two chestnut oaks,corner to the H.Z.Parsons land and down the top of a ridge with a line of said Parsons' land,S.7° W.180 feet to a chestnut oak; S.5° 30' E.173 feet to a chestnut oak on a point; S.34° 45' W.225 feet to a stake;S.29° 30' W.179 feet to a chestnut oak;S.1° W.207 feet to a chestnut oak;S.10° 30' W.375 feet to

a chestnut oak, corner to the John P.Myers tract; and with lines thereof S.1° E.190 feet to a chestnut oak and hickory; S.52° W.863 feet to a chesunut and maple; S.84° W.1126 feet to a stake at the mouth of a hollow on the east side of Gin's creek; thence continuing on the same, S.84° W.59 feet toa stake in Gin's creek; thence up said creek as it meanders N.30° 30' W.290 feet to a stake; N.6° E.197 feet to a stake; N.17° 30' W.363 feet to a stake; N.10° W.299 feet to a stake; N.34° 30' W.580 feet to a stake opposite to the Chas.C. Newman house; N.71° W.129 feet to the BEGINNING, and containing One Hundred and Eighty-three and one-half (183.5) acres, more or less.

Together with all the appurtenances unto the said land belonging.

To Have and to Hold the said tract of land with its appurtenances unto the said second party, its successors and assigns for ever, subject to the rights, interests and privileges of the said Stratton, and those claiming by, through, or under him.

And the said first parties covenant with the said second party, that they have lawful right to make this conveyance to the said second party; that the said second party shall quiet and peaceable possession of the same, except as to said Stratton rights, interest and privileges; that said land is free from incumbrances, with the exception aforesaid of said Stratton rights; that they will warrant generally the title thereto against the claims of all persons whomsoever, except as to said Stratton, and those claiming by, through or under him; and that they will execute such further assurances of and for the said land, and its appurtenances as may be requisite to make the title thereto sure and complete.

WITNESS the following signatures and seals.

Chas C. Newman (Seal).
mark

John W. Newman (Seal).
mark

Emmaker Newman (Seal).
mark

James J. Newman (Seal).
mark

VIRGINIA,

LEE COUNTY, TO-WIT:

I. H. F. Kilburn, a notary public in and for the county of Lee and State of Virginia, do hereby certify that Chas. C. Newman, Emma Newman, James J. Newman and John W. Newman, whose names are signed to the foregoing deed, bearing date on the 17th day of January, 1907, have acknowledged the same before me in my county aforesaid.

My term of office expires on the 11 day of Sept., 1910.

Given under my hand this the 19 day of Jan., 1907.

H. F. Kilburn, N.P.

Darby Coal & Coke Co

From } Deed

Chas. C. Newman et al

Exhibit "Ee"

Chas.C.Newman et al Complainants.

Vs.

Darby Coal & Coke Co. Defendant.

In Chancery.

Notes.

1: Equity looks upon that as done which ought to have been done.(Eaton on Equity,Page 77). This principal applies to the order of Nov.10,1897,wherein B.H.Sewell was directed to make to E.G.Parsons a deed to the land which he had previously sold to J.L.Pennington. Sewell does not make his deed as required by the court until in Nov.,1898.

2: The judgement which rescinds a contract with reference to real estate is not within the scope of the registry acts.

Nelson Vs. Turner,97 Va. 54.

3: The registry acts do not require orders and decrees for the sale of lands to be recorded.

Briscoe Vs.Ashley,24 Grat.454.
Trout Vs.Wormick, 77 Va.,731.

4: SUBROGATION.- A surety who pays the debt of his principal is in equity subrogated to all the rights of the creditor, as against the principal, but not as against his co-sureties. He is only entitled to contribution as gainst his co-surety.

Sands Admr.Vs.Durham, 98 Va. 392.

5:

5: Party asking subrogation must do so within five years after thr right accrued. $ection 3574.

6: ORDER of LIABILITY of Lien on Land aliened at diferent times to diferent parties.

"The law is now well settled that where land is subject to the lien of a judgement or other incumbrance,is sold in parcels to diferent persons by successive alienations,it is chargeable in the hands of the purchaser in the inverse order of such alienations"
Whitten Vs.Saunders, 75 Va.567;

"That where a part of a tract or parcel of land,subject to a mortgage,or other charge is conveyed,the residue is primarily liable for the whole of the debt;and where there are successive alienations,at diferent times,the land is liable in the inverse order of the conveyances. In other words,each grantee,as the phrase is,'sits in the seat of the grantor',and must take the land with all its equitable burdens. It is the same,in effect, as if the grantor had executed a mortgage on the unsold land for the indemnity of his grantee,so that a subsequent purchaser with notice of the first or any prior conveyance,takes the land with this increased burder upon it.".
Miller Vs.Holland, 84 Va.654-5
Guion Vs.Knapp, 29 Amer.Dec.,741;
2 Min. 306,etc.

To the Hon.H.A.W.Skeen,Judge of the Circuit Court for Lee County:

The joint plea of Charles C.Newman,John W.Newman,and James J.Newman

to a bross bill of complaint exhibited against them and others in the pending cause of themselves as complainants against The Darby Coal & Coke Company,a Corporation,as defendants,in the Circuit Court of Lee County,Va.,by C.D.Russell,Geo.W.Hughes,A.N.Pennington, W.J.Milham,as administrator of the estate of John S.Burgin,deceased.

The said defendants,by protestation,not confessing or acknowledging all or any of the matters and things in the said ~~bi~~ cross-bill of said Rusell,Hughes,Pennington and Milham contained to be true in manner and form as the same are therein set forth,for plea nevertheless to said cross-bill,do plead and aver:

That if said complainants in said cross-bill ever had any cause of complaint~~x~~,action or suit against the said defendnats to said cross-bill,for or concerning any of the matters in the said bill mentioned,which the said defendants to said cross-bill do in no wise admit,such cause of complaint,action or suit did not accrue within five years before the filing of the said cross-bill in said suit;nor did said defendants ~~xx~~ to said cross-bill,or either of them at any time within five years next before the ~~xxxxxxxxxxxxxx~~ filing of said cross-bill in said suit,promise or agree to come to account for,or to make any satisfaction,ot to pay any sum or sums of money,for or by reason of the matters charged in said cross-bill.

83574

Wherefore the said defendants to said cross-bill pray judgement whether they sahll be compelled to make any other or further answer to the said ~~xxxx~~ cross-bill,and pray that the same in so far as the said A.N.Pennington,C.D.Russell,Geo.W.Hughes,and W.J.Milham,as administrator of said John S.Burgin to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Pennington Bros for Newman

Chas. L. Newman et al

vs. } Plea

Darby Coal & Coke Co

Filed Sept 16-1907

W. C. P. Ewing,

Clerk

Chas.C.Newman et al. Complainants.

Vs. In Chancery.

The Darby Coal & Coke Co.,Defendnat.

To the Hon.H.A.W.Skeen,Judge of the Circuit Court of Lee County:

The Eceptions of The said Complainants to the answer of the said Darbey Coal & Coke Co.,filed in this cause on the 23rd day of May,1907,and for exceptions to said answer say that,said answer is insufficient and sets up no defense to the said Complainats' bill in this:

(1). In said defendant's answer it undertakes to excuse itself from the payment of your exceptors debt mentioned in their bill,on the ground that it was informed that there was a cloud resting upon the title of the land sold it,on account of A.N.Pennington and W.J.Milham as administrator of the estate of John S.Burgin, decd.,claiming to have judgements against John L.Pennington,who once owned the land sold by your exceptors to said defendant,and which judgements were probably liens upon said land. Said defendant asserts,and properly so,that if said Pennington and Milham were parties to the suit of the Greer Machinery Co.Vs.J.D.Pennington et al,they would be procluded from asserting any lien upon said land,and would have no enfroceable lien against the same. But said defendant fails to allege or plead in its answer,whether the said A.N.Pennington and W.J.Milham,as such administrator,or either of them,were parties to said last styled cause,which your exceptros are advised it should have done.

(2). That so much of said defendant's answer on page five and beginning at line twenty at the words,"But the allegations in the complainants' bill"etc,down to and including line four on page six of its answer should be stricken out,because

(a) If the proposition asserted by the complainants' in their bill to the efect that if the whole of the E.G.Parsons tract of land is encumbered with judgement liens while in his hands,and the same were sold by him in diferent parsels to diferent persons,

and at diferent times,such diferent parcels should be subjected to such liens in the invrse order of alienation,is not the law of this case on this point,said defendant should have raised the question by demurrer and not by its answer;and

(b) The staututе,section 3575,does not apply only to alienations made by the Judgement Debtor himslef,as serted in said defendant's answer,but in its very terms apply to the sale of real estate,made by any person,on which there is a judgement lien,whether such person be the judgement debtor or some vendee claiming by or through such judgement debtor. The statute reads: "Where real estate liable to the lien of a judgement is more that sufficient to satisfy the same,and it,or any part of it,has been aliened,as among the alienees for value,that which was alienened last,shall,in equity be first liable,etc". This satute is but declaratory of the Common Law.

(3). It failed to answer,or to make any ~~xpxxixix~~ excuse why it did not answer categorically,the specific interrogatory,contained in said bill,"If it claims there be judgement liens against said land,answer against whom such judgements are,in whose favor,the amount of each,and when each was obtained and docketed". The rule of pleading is that the defendant should answer <u>fully</u> and <u>completely</u>,or not at all.

(4). And for various other reasons to be assigned to bar.

All which are respectfully submitted,and judgement prayed,etc.

L. C. Newman et al

vs } Exceptions to M. C & C. Leo's Answer

Darby Coal Works Leo

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon The Darby Coal & Coke Company, a corporation organized under the laws of the State of Ohio and doing business in Virginia,

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the 3rd Monday in April, 1907, to answer a bill in chancery exhibited against ~~the~~ it by Charles C. Newman, John W. Newman and James J. Newman,

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the 26" day of March, 1907, and 131" year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk

, Clerk

Executed on the 28th day of March, 1907 by delivering a true copy of the within Summons, to R. A. Jones agent and General Manager of The Darby Coal & Coal Company a corporation, Said Service was made in Sec County, Va.

E S Stapleton D.S. fee

P. M. Bale S.S. Ces.

Chas. C. Newman, et al,

VS { SUBPŒNA IN CHANCERY

Darby Coal & Coke Co.

Pen. Bros., p. q.

To 2nd April Rules

Circuit Court

1907

Executed mechs

Chas. E. Newman et al

vs } Bill

Harby Coal & Coke Co